

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

AVRAHAM EISENBERG,

Defendant.

23-cr-10 (AS)

ORDER

ARUN SUBRAMANIAN, United States District Judge:

The Court has reviewed the parties’ submissions on the pending motion to dismiss the indictment. **By November 22, 2023**, the parties should meet and confer and send the Court a list of dates and times that would work for a hearing on that motion between December 5 and December 8, 2023.

In preparation for that hearing, the parties should consider the following issues, among any others that they wish to raise:

- Whether *any* transaction involving USDC, even where it is used as a medium of exchange to purchase something that is not a commodity, is nevertheless a “contract of sale of any commodity” given the statutory and regulatory definitions (*see* Dkt. 37 at 5-6);
- Whether the indictment alleges manipulation as to the price of USDC, deceptive conduct affecting the USDC market, or deceptive conduct otherwise “in connection with” a contract of sale of USDC (*see* Dkt. 37 at 7–8);
- Whether the indictment alleges a manipulative device “in connection with . . . any swap” where Eisenberg was the party on both ends of the MNGO Perpetuals (*see United States v. Phillips*, No. 22 Cr. 138 (S.D.N.Y. 2023), Dkt. 24 at 13 (The government: “So long as the scheme is ‘material to’ *the parties to the swap*—whether it be their decision to purchase, sell, exercise, or terminate—the scheme is in connection with the swap.” (emphasis added)));
- Whether manipulative conduct must be “aimed at deceiving investors” in the swaps or commodities markets themselves, and if not, what authorities support that position (*see* Dkt. 36 at 18; Dkt. 37 at 8); and

- If the manipulative conduct is alleged to have been aimed at Mango Markets, whether this satisfies the requirements of the commodities fraud and manipulation counts.

SO ORDERED.

Dated: November 21, 2023
New York, New York

A handwritten signature in black ink, appearing to read 'Arun Subramanian', is written over a horizontal line.

ARUN SUBRAMANIAN
United States District Judge